

DOCKET NO. LLI-CV21-6026840-S : SUPERIOR COURT
TOWN OF HARTLAND : J.D. OF LITCHFIELD
vs. : AT TORRINGTON
MARK BRAULT, ET AL. : MAY 8, 2023

PLAINTIFF'S POST-HEARING BRIEF

Pursuant to the court's Order of April 24, 2023 (Docket Entry No. 134.00) the Plaintiff, the Town of Hartland ("Plaintiff" or the "Town"), hereby submits this Post-Hearing Brief discussing how the Plaintiff sustained its burden of showing that the Defendants violated the relevant Town Ordinance by intentionally feeding bears.

I. BACKGROUND

1. The trial of this matter was conducted during five partial and full day sessions between September 30, 2021 and November 23, 2022.
2. Pursuant to the court's direction the parties each submitted proposed findings of fact and conclusions of law on January 20, 2023.
3. On April 24, 2023, the court (Moore, J.) ordered the parties to submit short and concise briefing as to how the Plaintiff sustained (or failed to sustain) its burden of proving that Mr. Brault intentionally fed bears.¹ The court specifically noted that briefing was not needed with regards to the video of Mr. Brault shaking something in the presence of bears (which the Defendants claim was a rattle).
4. Reference is hereby made to the Plaintiff's Proposed Findings of Facts and

¹ It should be noted that Mr. Brault is not the only Defendant and that his spouse, Carol, and the company he co-owns, Nature Havens, LLC, are also Defendants.

Conclusions of Law (Docket Entry No. 131.00) in which the relevant factual background, evidence and legal authority is fully detailed.

II. LEGAL STANDARD

The Town's bear feeding ordinance (the "Ordinance") provides in relevant part that "no person shall . . . feed, give, place, expose, deposit, distribute or scatter any edible material or attractant with the intention of feeding, attracting or enticing a bear; or store any pet food, garbage or other bear attractant in a manner that will result in bear feedings when bear are known to [frequent] the area . . ."

The Plaintiff needs to prove by a preponderance of the evidence that the Defendants violated the Ordinance. *See Town of S. Windsor v. S. Windsor Police Union Loc. 1480*, 255 Conn. 800, 825 (2001) (the normal burden of persuasion in a civil case is a preponderance of the evidence). In other words, the Plaintiff only needs to show that it was more likely than not that the Defendants fed, gave, placed, exposed, deposited, distributed or scattered any edible material or attractant with the intention of feeding, attracting or enticing bears.

Although there does not appear to be a standard, generally accepted, legal definition of intent for the purpose of civil actions, Connecticut criminal law and jurisprudence is instructive (and has been relied upon in civil jurisprudence). The Connecticut Penal Code provides that "[a] person acts 'intentionally' with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct." Conn. Gen. Stat. § 53a-3. **"Proof of intent is usually established through circumstantial evidence, from which the [trier of fact] may draw reasonable and logical inferences."** *State v. Lee*, 53 Conn. App. 690, 695 (1999) (emphasis added). "Intent may be,

and usually is, inferred from the defendant's verbal or physical conduct Intent may also be inferred from the surrounding circumstances The use of inferences based on circumstantial evidence is necessary because direct evidence of the accused's state of mind is rarely available Intent may be gleaned from circumstantial evidence such as . . . the events leading up to and immediately following the incident Furthermore, it is a permissible, albeit not a necessary or mandatory, inference that a defendant intended the natural consequences of his voluntary conduct.” *Valencis v. Nyberg*, 160 Conn. App. 777, 793 (2015) (citing *State v. Saez*, 115 Conn. App. 295, 302–303 (2009)). Here, the Plaintiff has presented both direct and circumstantial evidence of intent.

III. ARGUMENT

a. Introduction

The evidence presented at trial more than meets the Plaintiff's burden of proving that it is more likely than not that Mr. Brault and Nature Havens intentionally fed bears. The Plaintiff presented direct evidence of intentional bear feeding – Mr. Brault being caught on video feeding bears – and a mountain of circumstantial evidence from which the only reasonable inference that can be drawn is that Mr. Brault and Nature Havens fed bears.

The circumstantial evidence, to be detailed below, plainly shows that: (1) someone was feeding bears on or near Mr. Brault's property, (2) bears were habituated to Mr. Brault specifically and such behavior could only be explained by Mr. Brault feeding bears, (3) Dr. Charles Munn, who operated wildlife tourism businesses around the world which fed animals to concentrate their presence, came to Hartland for the express purpose of feeding bears and starting a wildlife tourism business centered on viewing bears, and (4) Mr. Brault formed

Defendant Nature Havens LLC with Dr. Munn to operate a wildlife tourism business guaranteeing bear viewing (just as Dr. Munn's other businesses were able to guarantee seeing animals because they were being fed).

It strains credulity to believe that this evinces accidental, unintentional or even negligent actions. Instead, this evidence shows that bears were being fed (including by Mr. Brault specifically) and that the Defendants had a practice of feeding bears and a clear purpose for doing so. The sum of this evidence (including the video showing Mr. Brault feeding bears) meets and exceeds the Plaintiff's burden of proving that it is more likely than not that Mr. Brault and Nature Havens intentionally fed and attracted bears.

b. Bears were being fed on or near Mr. Brault's property.

It is beyond reasonable dispute that the evidence at trial proved that someone was feeding bears on or near Mr. Brault's property. Plaintiff's expert, Paul Rego, testified that the bears observed near the Brault Property were habituated and the cause of that habituation was human provided food. (3/17/22, p. 23, 26-27).² In addition, the concentration of bear activity on and around Mr. Brault's property evidenced by bear sign and shown on DEEP GPS maps could only be explained by a concentrated food source provided by humans. (3/17/22, p. 33, 41, 44, 54, 61, 67). Mr. Brault tried to explain the bear activity by attempting to demonstrate that his property was naturally attractive to bears and that there were other nearby bear feeders. However, Mr. Rego testified that neither the natural attributes of Mr. Brault's property nor other bear feeders would explain the bear activity on Mr. Brault's property. (3/17/22, p. 93, 96-97; 11/23/22, pp. 16-17). It is fair and reasonable to infer that, as the bear activity cannot be

² Transcripts of trial testimony are identified by date and page number(s). Unless otherwise notes, relevant excerpts of trial testimony are included in the Appendix to the Plaintiff's Proposed Findings of Fact and Conclusions of Law.

explained by any natural attributes of Mr. Brault's property (which perhaps could be unintentional), it can only explained by intentional feeding.

c. Bears were habituated to Mr. Brault specifically.

More significantly, several pieces of evidence demonstrated that bears recognized Mr. Brault specifically and were habituated to him in particular, which could only occur from him feeding those bears. First, in addition to directly showing Mr. Brault feeding bears, the DEEP video presented at trial also provides circumstantial evidence that Mr. Brault had already been feeding those bears. The yearlings eagerly approach Mr. Brault and were extraordinarily comfortable in his presence. As Mr. Rego testified:

Q. Is it normal for a bear to be eager like that, approaching a human?

A. No.

Q. Okay. Do you have -- have you formed an expert opinion as to why these bears are behaving in this manner?

A. My opinion is that they're habituated to Mr. Brault.

Q. To Mr. Brault specifically?

A. Yes.

Q. So, how -- how could they be habituated to Mr. Brault specifically?

A. Uh, well, the only way I can think of is if they were being fed by him.

Q. Is there any other way that you're familiar with that a bear could be habituated in this manner to a specific person?

A. Uh, not to a specific person, no.

(3/17/22, p. 79).

It was clear from Mr. Brault's testimony and the evidence presented that Mr. Brault enjoyed being in the presence of bears and prided himself on how comfortable they were around him. Specifically, Mr. Brault presented video of himself closely following a bear on his property and testified that he took a nap next to a sleeping bear on his property. (Ex. UU 4-1; 8/16/22, pp. 127-30). Mr. Rego testified that this was not normal bear behavior and again showed bears who were habituated to Mr. Brault specifically and reiterated that the only way to habituate bears is by feeding them. (11/23/22, pp. 3-8). Later, when questioned by the court, Mr. Rego confirmed that this kind of "extreme" habituation can only occur from Mr. Brault providing bears with a consistent and concentrated food source. (11/23/22, pp. 39-40).³

The only logical and reasonable inference that can be drawn from the evidence showing bears habituated specifically to Mr. Brault, is that this habituation results from Mr. Brault intentionally feeding bears. Conversely, it defies common sense to believe that bears were napping next to Mr. Brault and running up to him like puppies because he accidentally fed them.

d. Nature Havens was modeled after businesses which guaranteed seeing certain animals because such animals were being fed.

Dr. Charles Munn developed a tourism business model in which wildlife was fed as a way to guarantee people a chance to see animals. (3/17/22, pp. 7-10). Dr. Munn came to Hartland for the express purpose of feeding bears and setting up a wildlife tourism business centered on viewing bears. (2/4/22, pp. 105-06, 116-17). Dr. Munn and Mr. Brault started a


³ A copy of this transcript excerpt is attached hereto as **Exhibit A**.

wildlife tourism business, Nature Havens, which promoted guaranteed bear viewing. (9/30/21, pp. 55-59, 70; Ex. 13). Nature Havens featured a “bear box” – an enclosed viewing area – placed in an area where bears frequented. 9/30/21, pp. 51-52, 59-60; 2/4/22, p. 9; Ex. 13). Mr. Rego explained that there was no way to predict, never mind guarantee, bear presence which did not involve a concentrated food source, such as one provided by humans (and no naturally occurring food source explained the bear activity on Mr. Brault property). (3/17/22, pp. 28 – 29, 93, 96-97). Given the indisputable evidence of habituated bears and bears eating human provided food on or near Mr. Brault’s property, it is fair, reasonable and logical to infer that Nature Havens was intentionally feeding bears in order to guarantee its customers the chance to see bears.

IV. CONCLUSION

Although the video of Mr. Brault feeding bears is sufficient alone to support a finding that it was more likely than not that Mr. Brault intentionally fed bears, there is overwhelming circumstantial evidence to support such a conclusion as well. Bears were being fed by humans on and near Mr. Brault’s property. Bears on and near Mr. Brault’s property were habituated to human contact and habituation only results from being fed by humans. Bears recognized Mr. Brault and were habituated to him specifically – which can only occur from Mr. Brault feeding bears. Finally, Mr. Brault went into business with a bear feeder and offered a guarantee to customers that they would see bears. The only way to reliably predict the presence of bears on Mr. Brault’s property is by feeding them. It defies logic that all of these events are the result of happy accidents or unintentional feeding of bears. Instead, the only logical and reasonable conclusion is that Mr. Brault and Nature Havens intentionally fed bears.

THE PLAINTIFF,
TOWN OF HARTLAND,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Plaintiff's Proposed Findings of Fact and Conclusions of Law has or will immediately be sent via email on this 20th day of January 2023 to the following:

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EXHIBIT A

LLI-CV21-6026840-S : SUPERIOR COURT
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TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JOHN D. MOORE, JUDGE

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1 the best, your Honor, but I'm pretty sure. I think we
2 saw the whole conjuring of bears.

3 THE COURT: Okay. And I believe Mr. Brault also
4 showed videos of 288 on his property in other places,
5 do you remember those?

6 THE WITNESS: Sure.

7 THE COURT: Okay. Mr. Brault made -- and, again,
8 this goes to the expert opinion I believe you just gave
9 or were giving earlier today about habituation, and I
10 think you've given this previously, that you've
11 essentially told us that the primary way, and perhaps
12 the only way to habituate a bear, is with providing
13 them with a consistent or concentrated food source.
14 Mr. Brault testified that he has come to know 288 and
15 her two yearlings over the years. Isn't it possible
16 that his interaction with these bears could have
17 habituated these bears to him as well?

18 THE WITNESS: Um, I think that just seeing bears
19 over the years, um, it would be very hard to believe
20 that they would have the level of habituation that --
21 that we're seeing in those videos for walking that
22 closely, um, taking a nap on the same log with a bear.
23 Um, there's -- there's really no reason for a bear to
24 -- to entrust a human or to allow a human to get that
25 close. Something has to -- something has to initiate
26 that. Um, so I think it's unreasonable that -- that
27 just seeing a bear once in a while and approaching it

1 would -- would lead to that level of habituation. I
2 would say that a much lesser level of habituation
3 possibly, but the level we've seen seems pretty extreme
4 to me. It is very extreme.

5 THE COURT: And I probably should have phrased my
6 question as such where I think you contemplated this,
7 absent providing 288 and her yearlings with a
8 consistent and concentrated food source, it's your
9 expert opinion within a reasonable degree of
10 probability that this would not have habituated these
11 bears to Mr. Brault to the extent that you witnessed it
12 in evidence in this case, is that correct?

13 THE WITNESS: That's correct.

14 THE COURT: Okay. Now, during your rebuttal
15 testimony this morning, you indicated that bears do not
16 commute in terms of -- and, again, when I asked you
17 what you inferred Attorney Vegliante meant when he used
18 the word "commute," you said travel between two places
19 such as work and home, et cetera, or, I suppose,
20 sleeping and eating. However, you have testified that
21 bears, you know, in several different ways, that bears
22 will go to a food source, right?

23 THE WITNESS: Absolutely.

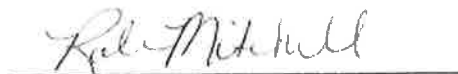
24 THE COURT: So that if Ginny Apple did indeed
25 happen to be feeding the bears, it would not be unusual
26 for the bears to be going to her house to get some
27 food, right?

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C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Litchfield at Torrington, Connecticut, before the Honorable John D. Moore, Judge, on the 23rd day of November, 2022.

Dated this 28th day of November, 2022, in Torrington, Connecticut.

A handwritten signature in cursive script, reading "Robin Mitchell", is written over a horizontal line.

Robin Mitchell
Court Recording Monitor